

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION

Clarence Voigt,

Plaintiff,

vs.

Patrick A. Conmy, Daniel L. Hovland, and
Charles Miller,

Defendants.

**ORDER ADOPTING REPORT AND
RECOMMENDATIONS**

Civil No. 1:10-cv-35

Plaintiff Clarence Voigt submitted a *pro se* complaint pursuant to 42 U.S.C. § 1983 and Bivens v. Six Unkonwn Fed. Narcotics Agents, 403 U.S. 388 (1971). The Court has received a Report and Recommendation from the Honorable Karen K. Klein, United States Magistrate Judge, pursuant to 28 U.S.C. § 636, recommending that Voigt's complaint be dismissed and the Court certify that an appeal from the dismissal of this action may not be taken *in forma pauperis* because such an appeal is frivolous and cannot be taken in good faith (Doc. #2). Voigt filed objections to the Report and Recommendation (Doc. #4), followed by an amendment to his objections (Doc. #5).

The Court has conducted a *de novo* review and finds all of Voigt's objections to be frivolous. The Magistrate Judge's recommendation is consistent with the law. Accordingly, the Court hereby adopts the Report and Recommendation in its entirety.

Based upon the entire record before the Court, dismissal of the motion is not debatable, reasonably subject to a different outcome on appeal, or otherwise deserving of further proceedings. Therefore, a certificate of appealability will not be issued by this court. See Tiedeman v. Benson, 122 F.3d 518, 522 (8th Cir. 1997) (holding that a district court possesses the authority to issue certificates of appealability under 28 U.S.C. § 2253(c)). If Voigt desires further review of his petition, he may request the issuance of a certificate of appealability by a circuit judge of the Eighth Circuit Court of Appeals in

accordance with Tiedeman v. Benson, 122 F.3d 518, 25-52 (8th Cir. 1997).

Additionally, the Court finds that any appeal would be frivolous, could not be taken in good faith, and may not be taken *in forma pauperis*. See 28 U.S.C. § 1915(a)(3) (“An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.”); see also Coppedge v. United States, 360 U.S. 438, 444-45 (1962).

For the reasons set forth therein, Voigt’s complaint is **DENIED WITH PREJUDICE**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated this 9th day of July, 2010.

/s/ Ralph R. Erickson
Ralph R. Erickson, Chief District Judge
United States District Court